IN THE

SUPREME COURT

OF THE UNITED STATES

October Term, 1920

Number 412

JOHN GOOCH, JR.,
Petitioner.

vs.

OREGON SHORT LINE RAILROAD COMPANY, a Corporation,
Respondent.

BRIEF OF RESPONDENT

On Petition for Writ of Certiorari to the Circuit Court of Appeals of the United States for the Ninth Circuit.

GEORGE H. SMITH,
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H. B. THOMPSON,
Pocatello, Idaho.
Counsel for Respondent.

In reply to the brief of the petitioner herein, two observations might be made at the start which should avoid the necessity of a categorical response. They are, first, that the premises of petitioner's counsel are not supported by the record, and hence the conclusions which

he seeks to deduce do not follow, because under the facts of the case as they appear of record, and even as assumed by petitioner's counsel, he has not brought the petitioner within the class affected by the unconstitutional or unlawful aspect of the case which he seeks to assume, and, secondly, the brief does not disclose either facts or authorities entitling him to the issuance of a Writ of Certiorari.

STATEMENT OF THE CASE

A re-statement of the entire facts of the case is unnecessary. The statement appearing at page 3 and the first half of page 4 of the petitioner's brief is substantially correct. It is not strictly true, however, that the petitioner "remained in the hospital under the exclusive care of the physicians and hospital attendants of the railroad company for four weeks, and was then *allowed* a short trip home for Christmas, after which he returned to the hospital and was finally discharged therefrom on January 15, 1918." The actual facts are that the petitioner never asked for, and was never refused, the services of any other physicians than those of the railroad company (Transcrip, p. 50), and that in place of his being allowed two short trips home for Christmas on condition that he return to, and remain, at the hospital thereafter until January 15, 1918, as is implied by the brief of petitioner's counsel, "after the plaintiff left the hospital just prior to Christmas, he made two trips back to the hospital, and the first time the bandage on his arm and shoulder was changed" (Transcript, p. 50);

nor was he suffering from broken bones or a "serious heart lesion," but the only broken bone consisted of a fractured clavicle or collar bone, which, when Gooch left the hospital just before Christmas, was bandaged so that his arm was held against his body, with an adhesive tape around the whole so that the broken collar bone would properly mend, and he was told to return to the hospital within a week. The bandages remained upon him for a week, when he returned to the hospital and they were renewed. His collar bone was set the day after he arrived at the hospital (Transcript, p. 42). The plaintiff's physician examined him on January 4, 1918, before he had been "discharged" by the railroad company's physicians, and "the plaintiff's heart, while enlarged some, still had a murmur" (Transcript, p 56), but we find nothing in the record to support the statement that he had a [redacted] or other lesion of the heart, nor do we find anything in the record to support the statement on page 4 of petitioner's brief that the Claim Agent of the railroad company ever made any offer of settlement to Gooch upon either of his visits to the hospital, as is implied, and indeed expressed, at the bottom of page 4 of petitioner's brief, where it is stated that the petitioner was visited at least on two occasions by L. Rasmusson, the Claim Agent of the respondent-railroad company, who discussed with him a settlement and made him offers, which Gooch declined to consider at that time. Gooch's testimony, according to the record, is that about five days after he was admitted to the hospital Mr. Rasmusson came to his room and asked him if he

was ready for a settlement with the company, and Gooch told him he was not in a condition to talk with him and was not ready for a settlement (Transcript, p. 54), and the second time the witness saw Mr. Rasmusson at the hospital was about ten days afterward, at which time Mr. Rasmusson's statement was similar to the first one, and according to Gooch's testimony he replied that in the condition that he was in he didn't know really how badly he was injured, and would rather wait a while until he got out of the hospital before he made any settlement with him; he had no conversation with Mr. Rasmusson as to whether he had presented any written claims to the company. (Transcript, p. 55).

BRIEF OF THE ARGUMENT

A stipulation that claim for damages shall be made in writing within a specified time is not a stipulation for limitation of, or exemption from, liability (Transcript of Record, pp. 98 to 99).

The provisions of Section 6 of the Act to Regulate Commerce extend to, and cover the right of passengers as well as freight:

> Louisville & Nashville R. Co. vs. Mottley, 219 U. S. 467;
> Norfolk Sou. R. Co. vs. Chatman, 244 U. S. 276;
> Chicago, Indianapolis & Louisville R. Co. vs. United States, 219 U. S. 486.

The first Cummins Act and the Carmack Amendment deal only with the issuance of a bill of lading for the transportation of freight and the limitation of time which

may be provided by tariff for the presentation of claims for damages to freight in transit.

Before one may be heard to complain that a law or an agreement, or right based thereon, is repugnant to the Federal constitution or rules of construction of the Supreme Court of the United States, he must bring himself within the class affected by the unconstitutional or unlawful feature:

> Arcadelphia Milling Co. vs. St. Louis S. W. R. Co., 249 U. S. 134.

Thus employers in hazardous industries may not raise the question whether a State Employers' Liability Act, confined on its face to certain industries designated hazardous, is unconstitutional if it be extended by construction to non-hazardous occupations:

> Arizona Copper Co. vs. Hammer, 250 U. S. 400.

ARGUMENT.

From so much of the record as has heretofore been referred to, it is beyond dispute that the petitioner was in full possession of his mental faculties at all times following the collision in which he was injured, and that that constituted no excuse for *his* failure to present the claim required by the tariffs, and his contract of transportation. The District Judge, in passing upon the motion for nonsuit, said: "Now, as I have already stated to counsel, it is clear in my mind that so far as physical and mental capacity were concerned, the plaintiff was

able to comply with his contract in this respect" (Transcript, pp. 68-69). Petitioner's counsel substantially concedes, at page 10 of his brief, that in such a situation the stipulation in the contract of carriage could have been complied with, but for the purpose of avoiding the stipulation he seeks to assume a state of facts not analogous to those in the case at bar, and this Court will not, certainly on a petition for a Writ of Certiorari, indulge in abstractions or possibilities which are not present in the case before it.

> Arcadelphia Milling Co. vs. St. Louis S. W. R. Co., 249 U. S. 134;
> Arizona Copper Co. vs. Hammer, 250 U. S. 400.

It seems needless to expressly suggest that the cases cited by petitioner's counsel at page 6 of his brief relative to stipulations for exemption from liability have no application to the case at bar, for the reason heretofore mentioned and supported by authorities, but the tariff provision in question does not consist of a limitation of liability or exemption from liability, but simply of a condtion precedent for the protection of the carrier against fraud and fabricated claims.

Finally, no condition is shown here to exist such as will sustain a petition for Writ of Certiorari, and no authorities are cited by petitioner's counsel in support thereof, hence, it is needless to cite any in opposition thereto. Suffice it to say that the only portion of petitioner's brief devoted to this point is the last eight lines

thereof, in which he suggests that the record in this case should be certified to this Court for examination and review to the end that common carriers in the Ninth Circuit be governed by the same rules that govern common carriers in other portions of the United States, but he fails to show that any Circuit Court of Appeals or other Court in any other portion of the United States has adopted a different rule with reference to the principle of law here involved, and hence it follows that the petition should be dismissed.

Respectfully submitted,

GEORGE H. SMITH,

H. B. THOMPSON,

Attorneys for Respondent.

Supreme Court of the United States,

OCTOBER TERM, 1921.

No. 90.

JOHN GOOCH, JR.,

Petitioner,

vs.

OREGON SHORT LINE RAILROAD COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR RESPONDENT.

GEORGE H. SMITH,
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Supreme Court of the United States.

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OREGON SHORT LINE RAILROAD COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR RESPONDENT.

Statement of the Case.

This action is for the recovery of damages for personal injuries sustained by petitioner (hereinafter referred to as the plaintiff) on a railroad train of respondent (hereinafter referred to as defendant) on November 24, 1917. It was instituted in a State Court of the State of Idaho, and

removed therefrom to the District Court of the United States for the District of Idaho, Eastern Division [Transcript of Record, p. 43]. The District Court entered judgment of dismissal on a non-suit ordered at the conclusion of the plaintiff's case [pp. 8, 28, 33, 36]. This judgment was affirmed by the Circuit Court of Appeals for the Ninth Circuit and petition for rehearing was denied [pp. 49, 50]. The opinion of the Circuit Court of Appeals appears in the transcript of record at pages 46 to 49, and is reported in 264 Federal, 664. Writ of *certiorari* was allowed by this Court October 11, 1920 [254 U. S. 623].

Plaintiff had made a shipment of cattle by the defendant's railroad and was accompanying the shipment as caretaker [Complaint, par. IV, p. 2]. While asleep in the caboose of the stock train he received personal injuries through a locomotive of the defendant colliding with the caboose [p. 14]. The contract for the transportation of plaintiff's cattle and for his own transportation as the caretaker thereof, which was signed by plaintiff [p. 23], contained a provision requiring written notice of any claim for personal injuries to be given within thirty days, as follows:

> "In consideration of his carriage with-
> "out charge other than the sum stipulated
> "herein for the carriage of the live stock
> "mentioned herein, as a caretaker accom-
> "panying said live stock, the undersigned

"hereby agrees * * * (2) That the carrier "shall not be liable for any accident or in- "jury to him caused by negligence on either "the going or return trip, or while on or "around the railroad tracks or premises, un- "less the undersigned, or his heirs or per- "sonal representatives, shall within thirty "days after the accident or injury give "notice in writing of his or their claim there- "for to the general manager of the carrier "on whose lines it occurred, and unless such "notice is given no claim for personal in- "jury, death, or loss of baggage shall be "valid or enforcible" [p. 10].

Defendant's answer pleaded this contract as an affirmative defense, and that plaintiff did not give notice in writing of his claim for personal injuries as required by said contract [Answer, par. IX, pp. 6 and 7]. The contract was introduced in evidence as a part of the cross-examination of plaintiff [p. 23]. It is admitted that no notice in writing of his claim was given by or in behalf of plaintiff [p. 20, Brief for Petitioner, p. 4]. The motion to dismiss was made and decided upon the failure to give the notice required by the above-quoted contract provision.

The sole question presented to this Court for determination is whether the contract requirement of written notice of claim to the General Manager of defendant within 30 days after the accident or injury is void as an attempted

stipulation for an exemption from or limitation of liability on account of injuries received by passengers for hire caused by the negligence of the carrier. In the brief for petitioner [p. 4] the question for review is limited as aforesaid in the following language:

"The petitioner specifies and will urge as the "only error committed, that the Circuit Court of "Appeals was in error in holding the stipulation "herein quoted to be a lawful stipulation, upon "the ground that it is not permitted to common "carriers of passengers to stipulate for any ex- "emption from or limitation of liability on ac- "count of injuries received by passengers for hire "caused by the negligence of the carrier or its "servants."

This was the sole proposition upon which the application for *certiorari* was based, and therefore no other question is now available. *Alice State Bank* v. *Houston Pasture Co.*, 247 U. S. 240, 242.

Some other questions were raised during the trial and decided adversely to plaintiff by the trial court, and the assignments of error on the writ of error to the Circuit Court of Appeals [pp. 38, 39] presented certain of such other questions, but, in view of the limitation of the case in this Court to the single question above stated, we omit reference to all facts developed at the trial which do not concern said question.

ARGUMENT.

The contract requirement of written notice of claim to the General Manager of the defendant within thirty days from the date of injury is not an exemption from or limitation of the carrier's liability for negligence but a valid condition to recovery.

The contention of the plaintiff is that the contract requirement of written notice in this case was not a lawful stipulation but was void as an attempted exemption from or limitation of liability for negligence. In the language of the plaintiff's brief [p. 4]—"The argument of the "petitioner is based exclusively upon the prin-"ciples enunciated by this court in the following "cases: *N. Y. Cent. R. R. Co.* v. *Lockwood*, 17 "Wall. 357; *Chicago, M. & St. P. R. R. Co.* v. "*Solan*, 169 U. S. 133; *Norfolk, S. R. Co.* v. "*Chatman*, 244 U. S. 276." But the three cases so relied on by the plaintiff involved merely the elementary propositions, admitted by the defendant throughout this case, that stipulations between common carriers and passengers for hire for exemption from or limitation of liability for negligence are invalid and that the user of a drover's pass or contract has the status of a passenger for hire. All three cases involved personal injuries to persons travelling on the so-called drover's pass. In *New York Central R. R. Co.*

v. *Lockwood, supra,* the railroad company relied on a provision by which the drover waived *all claims for damages or injuries* [17 Wall. 357 at 359]. The court stated the question before it to be, "whether a railroad company carrying "passengers for hire can lawfully stipulate not "to be answerable for their own or their servants "negligence" [p. 359]. In *Chicago, Milwaukee & St. Paul R. R. Co.* v. *Solan, supra,* the railroad company relied on a provision that "The com- "pany shall in no event be liable to the owner "or person in charge of said stock for any injury "to his person in any amount exceeding the sum "of $500" [169 U. S. 133 at 134]. In *Norfolk Southern R. R. Co.* v. *Chatman, supra,* the railroad company relied upon a provision by which "the undersigned [the drover] does hereby vol- "untarily assume all risks of accidents or damage "to his person or property" whether caused by negligence or otherwise [244 U. S. 276 at 278]. The three authorities on which the contention of the plaintiff is "exclusively" based were, therefore, concerned only with stipulations designed to relieve the carrier of all liability for negligence or otherwise. They did not concern contract provisions requiring merely notice of claim within a specified time.

But the principle is equally well settled that, in the absence of a statute controlling the subject, a carrier may impose reasonable requirements as

conditions precedent to the maintaining of an action against the carrier for a breach of its duties. The requirement of written notice of claim within thirty days, involved in the instant case, is within this principle. Such conditions are essentially different in principle from limitations of liability. The one is a mere condition to be observed before resorting to the complete enjoyment of substantive rights. The other is a deprivation of or limitation of substantive rights. The one prescribes how a complete, undiminished cause of action and liability may be enforced. The other destroys the cause of action or obliterates the obligation. The one affects the adjective rights or remedies only, leaving the substantive rights or obligations unimpaired. The other affects the substantive right. Accordingly, provisions limiting the time within which shippers of goods must file claim for damages have been sustained by this Court in numerous cases. For example; *Express Company* v. *Caldwell,* 21 Wall. 264; *Queen of the Pacific,* 180 U. S. 49; *Georgia, Florida & Alabama Ry. Co.* v. *Blish Milling Co.,* 241 U. S. 190; *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Starbird,* 243 U. S. 592; *Erie R. R. Co.* v. *Stone,* 244 U. S. 332; *Southern Pacific Co.* v. *Stewart,* 248 U. S. 446; *B. & O. R. R. Co.* v. *Leach,* 249 U. S. 217.

The cases cited above concern the carriage of goods. The plaintiff contends that the decisions

in the goods cases are not applicable to passenger cases. It does not appear that a requirement of notice of claim within a specified time has been passed upon by this Court in the case of personal injury to a passenger. It is, however, demonstrable that the principle is the same in the case of carriage of goods and in the case of carriage of passengers. This is apparent from a consideration of the reason underlying the rule as to the invalidity of contracts of exemption from liability for negligence. This underlying reason is the repugnance to public policy of a contract releasing a common carrier from its essential obligation to exercise the utmost care and diligence in the performance of its duties to the public. In *New York Central R. R. Co.* v. *Lockwood, supra* [17 Wall. 357], a passenger case, the governing public policy was considered at length and the Court held [at p. 381] that an attempted exemption of negligence is "repugnant to the law of "their [the carriers] foundation and to the public "good". And in that case the Court in summarizing its opinion said [p. 384]: "That these rules "apply both to carriers of goods and carriers of "passengers for hire, and with special force to "the latter". In *Chicago, Milwaukee & St. Paul R. R. Co.* v. *Solan, supra* [169 U. S. 133] the Court said [p. 135]: "Any contract by which a "common carrier of goods or passengers under-"takes to exempt itself from all responsibility for

"loss or damage arising from the negligence of "himself or his servants is void as against public "policy, as attempting to put off the essential "duties resting upon every public carrier by virtue "of his employment, and as tending to defeat the "fundamental principle on which the law of com- "mon carriers was established—the securing of "the utmost care and diligence in the perform- "ance of their important duties to the public." In *Santa Fe Railway Co.* v. *Grant Bros.*, 228 U. S. 177, a case involving damage to goods, this Court said [p. 184]: "It is the established doctrine of "this court that common carriers cannot secure "immunity from liability for their negligence by "any sort of stipulation. * * * The rule "rests on broad grounds of public policy justify- "ing the restriction of liberty of contract because "of the public ends to be achieved. The great ob- "ject of the law governing common carriers was "to secure the utmost care in the rendering of a "service of the highest importance to the com- "munity". The public policy underlying the rule against limitation of liability for negligence applies as fully to the cases of damage to goods as to the cases of injuries to passengers. And so limitations of liability for negligence have been held void in the cases of damages to goods as well as in the cases of injuries to passengers. This sufficiently appears by the foregoing citations. But see also: *Boston & Maine R. R. Co.* v. *Piper*,

246 U. S. 439; *Cau* v. *Texas & Pacific Ry. Co.*, 194 U. S. 427. But in cases involving only a requirement of notice of claim, or some similar reasonable condition to recovery, in the case of the carriage of goods the reasoning has been that the public policy involved in the limitation of liability cases is not violated, since the full measure of the carrier's liability continues and may be enforced upon compliance by a claimant with the conditions to which he has agreed.

In *Express Co.* v. *Caldwell*, 21 Wall. 264, a case of damage to goods, which concerned a requirement that claim be filed within ninety days, this Court said [p. 268]: "It may also be remarked "that the contract is not a stipulation for exemp- "tion from responsibility for the defendant's neg- "ligence, or for that of their servants. It is "freely conceded that had it been such, it would "have been against the policy of the law, and "inoperative. Such was our opinion in *Railroad "Company* v. *Lockwood*. A common carrier is "always responsible for his negligence, no matter "what his stipulations may be. But an agreement "that in case of failure by the carrier to deliver "the goods, a claim shall be made by the bailor, "or by the consignee, within a specified period, "if that period be a reasonable one, is altogether "of a different character. It contravenes no "public policy. It excuses no negligence. It is "perfectly consistent with holding the carrier

"to the fullest measure of good faith, of dili-"gence, and of capacity, which the strictest "rules of the common law ever required. And it "is intrinsically just, as applied to the present "case." That this reasoning which has justified the distinction between limitations of liability and requirements as to notices of claim in the cases of damage to goods is equally applicable to cases of injuries to passengers is obvious.

Some of the above cited decisions of this Court sustaining requirements of notice of claim within a specified time were rendered subsequent to 1906, but such decisions are not dependent upon the Carmack amendment to Section 20 of the Act to Regulate Commerce. That provision was originally enacted in 1906 [34 Stats. 584, 595, c. 3591], has been elaborated by various amendments, viz.: March 4, 1915, c. 176 [38 Stats. 1196]; August 9, 1916, c. 301 [39 Stats. 441]; Feb. 28, 1920, c. 91 [41 Stats. 456, 494], and now constitutes paragraph [11] of Section 20 of the Interstate Commerce Act. Its primary purpose was to make the initial carrier of any shipment liable for loss or damage caused by connecting carriers and so relieve the shipper of the burden of ascertaining the particular carrier at fault as the proper party from which to seek recovery. The amendment contained in its original form and still contains a provision that "no contract, "receipt, rule, regulation or other limitation of

"any character whatsoever shall exempt such "common carrier, railroad or transportation com- "pany from the liability hereby imposed". It was said of this amendment in *Adams Express Co. v. Croninger*, 226 U. S. 491, at 511; "The statutory "liability, aside from responsibility for the de- "fault of a connecting carrier in the route, is not "beyond the liability imposed by common law", and the clause above quoted, forbidding exemptions of liability, was characterized as a statutory declaration that a contract of exemption from liability for negligence is against public policy and void. At no stage of the development of the Carmack amendment has it contained any grant of power to impose conditions as to notice of claim or otherwise, the tendency of all amendments having been restrictive, except that the amendment limiting the periods prescribed by carriers for giving notice of claim, filing claims and instituting suits, as to loss and damage of freight, of course recognizes the right to impose such conditions. This right, however, was a development of the common law. In *St. Louis, Iron Mountain & Southern R. R. Co. v. Starbird*, 243 U. S. 592, at 604, this Court said: "Stipulations of this character have not infre- "quently been inserted in bills of lading and where "reasonable in their terms have been sustained by "this court," and the Court cited *Express Co. v. Caldwell*, 21 Wall. 264, and *Queen of the Pacific*,

180 U. S. 49, which cases were decided long prior to the Carmack amendment.

Stipulations requiring notice of claim in the cases of carriage of goods in various forms and within various periods have been recognized as reasonable on the general ground that unless notice of the claim is brought to the attention of responsible officials or representatives of the carrier within a short time of the loss or damage the carrier will not be able to make that prompt investigation, including the securing of statements of witnesses, which is essential to the protection of its rights. In *Georgia, Florida & Alabama Ry. Co.* v. *Blish Milling Co.*, 241 U. S. 190, this Court said [p. 196]: "Ordinarily the managing "officers, and those responsible for the settlement "and contest of claims, would be without actual "knowledge of the facts of a particular transac- "tion. The purpose of the stipulation is not to "escape liability but to facilitate prompt investi- "gation. And, to this end, it is a precaution of "obvious wisdom, and in no respect repugnant to "public policy, that the carrier by its contracts "should require reasonable notice of all claims "against it even with respect to its own opera- "tions". In *Express Co.* v. *Caldwell*, 21 Wall. 264, this Court said [p. 268]: "The defendants "are an express company. We cannot close our "eyes to the nature of their business. They carry "small parcels, easily lost or mislaid, and not

"easily traced. They carry them in great num-
"bers. Express companies are modern conveni-
"ences, and notoriously they are very largely
"employed. They may carry, they often do carry
"hundreds, even thousands of packages daily. If
"one be lost, or alleged to be lost, the difficulty of
"tracing it is increased by the fact that so many
"are carried, and it becomes greater the longer
"the search is delayed. If a bailor may delay
"giving notice to them of a loss, or making a claim
"indefinitely, they may not be able to trace the
"parcels bailed, and to recover them, if accident-
"ally missent, or if they have in fact been properly
"delivered. With the bailor the bailment is a
"single transaction, of which he has full knowl-
"edge; with the bailee, it is one of a multitude.
"There is no hardship in requiring the bailor to
"give notice of the loss if any, or make a claim
"for compensation within a reasonable time after
"he has delivered the parcel to the carrier. There
"is great hardship in requiring the carrier to ac-
"count for the parcel long after that time, when
"he has had no notice of any failure of duty on
"his part, and when the lapse of time has made
"it difficult, if not impossible to ascertain the
"actual facts. For these reasons such limitations
"have been held valid in similar contracts, even
"when they seem to be less reasonable than in
"the contracts of common carriers". And this
Court has held shippers to a compliance with their

contracts in respect of such notices notwithstanding knowledge of the damage may have been brought to the attention of representatives of the carrier in some other form than that required by the contract. For example, in *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Starbird*, 243 U. S. 592, the contract called for written notice of claims within 36 hours after notice of arrival of the freight and it appeared that the dockmaster of the delivering carrier had knowledge of the damaged condition in which the shipment arrived but this Court held that verbal notice to the dockmaster or his actual knowledge of the damage to the shipment did not dispense with a compliance with the contract provision for notice in writing. See also *Southern Pacific Co.* v. *Stewart*, 248 U. S. 446. Reasoning of a similar character justifies the requirement of written notice of claim within a short period of time in a contract covering the transportation of livestock shipments and the drover or caretaker accompanying such shipments. It is a matter of common knowledge that the caretaker or drover in the performance of his duties necessarily rides upon the stock train and at various times and places has occasion to go upon and about the train, sometimes while it is moving, more particularly when it is in yards and terminals. The opportunity for injury without the knowledge of officers or agents of the carriers is always present. Seasonable notice of injuries,

in order that their extent and the circumstances under which they were received may be investigated, is essential to enable the carrier to act intelligently and to protect itself from fraudulent claims. Verbal notice to some trainman or other irresponsible employee would not constitute adequate protection. Both the courts below have expressed the view that the particular requirement of notice of claim required in this case is reasonable. Judge Dietrich in the District Court said [p. 11]: "Upon compliance with a very "simple condition, deemed to be reasonable and "in furtherance of sound public policy, the plain-"tiff could have demanded full compensation for "his injury. The reasons for requiring prompt "notice of claim for injury to person or prop-"erty have been too often considered and recog-"nized to require present discussion". On this point the Circuit Court of Appeals referred [p. 48] to opinions of this Court regarding the reasonableness of requirements of notice and held the instant case not distinguishable. It should be observed in this connection that all that is required by the stipulation in this case is a notice of intention to make a claim for damages. The claimant is not required to specify the amount of his claim, disclose the facts as to the extent of his injury, or bind himself by any admissions.

The gist of the argument presented by the brief in this Court in behalf of the plaintiff is [Peti-

tioner's brief, p. 7] that the requirement of thirty days' notice would amount to an absolute exemption of liability where a passenger dies thirty-one days or more after his injury. Construing the argument as referring to a case where the injuries were so serious as to totally disable the passenger to give notice of his claim within thirty days or prior to his death, and even assuming that the contract provision would not be so construed as to allow his personal representatives to give the notice within thirty days after his death, the possibility of such a case arising does not invalidate the contract provision in all cases. It was expressly held by the trial court that the plaintiff was neither physically nor mentally disabled to give the notice required by his contract [p. 29 and pp. 33 to 36]. It is not claimed in this Court that there was any such disability. There is a valid reason from the standpoint of the carrier for this requirement and in ordinary cases its observance would not be burdensome to claimants. If under the circumstances of some extraordinary case it is impracticable for the claimant to give the notice, the result would be that the requirement would not be held reasonable and applicable in such a case. In *Queen of the Pacific*, 180 U. S. 49, this Court said [at p. 53]: "Notice "might also be deemed reasonable, or otherwise, "according to the facts of the particular case. "Thus if the *Queen* had been driven out to

"sea and was not heard from for thirty days, "obviously the provision would not apply since its "enforcement might wholly destroy the right of "recovery. The question is whether under the "circumstances of a particular case the require-"ment be a reasonable one or not." In *St. Louis, Iron Mountain & Southern Ry. Co.* v. *Starbird*, 243 U. S. 592, it was said [at p. 604]: "Whether "such stipulations are reasonable or not depends "on the circumstances of each case." But no question is presented in this case as to the reasonableness of the stipulation here involved as applied to the circumstances of this case.

CONCLUSION.

The judgment should be affirmed.

Respectfully submitted.

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November, 1921.